

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE B.S.SREENIVASA RAO

WRIT PETITION NO.42830 TO 42835/1995

Between :

W.P. NO. 42830/1995

1. Koppalli Muniswamy Reddy,
S/o Munivenkata Reddy, Major

W.P. NO. 42831/1995

2. Venkatamuni Reddy,
S/o Munivenkata Reddy, Major

W.P. NO.42832/1995

3. Krishna Reddy,
S/o Munisami Reddy,
Major, by its LRs,
(a) K.V.Srinivasa Reddy, 36 years,
(b) Munivenkata Reddy, 20years,
(c) K.V.Narayana Reddy, 31 years
S/o late Krishna Reddy.

W.P. NO.42833/1995

4. Gangala Reddy,
S/o Krishna Reddy, Major

W.P. NO.42834/1995

5. Jaimunnisa, Major,
W/o Tajuddin

W.P. NO.42835/1995

6. Tajunnisa, Major,
W/o Tajuddin

[Signature]

Petitioners 1 to 6 are all residents
of Kempapura Mujrai,
Kyasamballi Hobli,
Bangarpet Taluk,
Kolar District.

.. PETITIONERS

(By Sri B.a.Lokesh, Adv.,)

AND :

1. The State of Karnataka,
by its Secretary to the
Department of Revenue,
Vidhana Soudha,
Bangalore - 560 001.
2. The Tahsildar,
Bangarpet Taluk,
Kolar District.
3. Subbarayappa,
S/o Doddagantlappa,
by Lrs Gantalappa.
4. Munivenkatappa
S/o Doddagantlappa
By his LRs
 - (a) Narayanamma,
W/o Munivenkatappa
 - (b) Venkatalakshmu,
D/o Munivenkatappa,
 - (c) Venkataramanappa,
S/o Munivenkatappa,
 - (d) Seenappa,
S/o Munivenkatappa,
5. Venkataramappa
S/o Chinnagantlappa
6. Hanumappa,
S/o Muneppa
7. Chikkagangappa,
S/o Hanumappa
LRs
 - (a) Venkatasamy,

(b) Venkatappa,
(c) Narayanappa
S/o Chikkagantalappa

8. Gangamma,
D/o Munivagalappa

9. Venkatamma,
W/o Thoti Gangappa,

All are Majors,
R/o Kempapura Village,
Kyasamballi Hobli,
Bangarpet Taluk,
Kolar District.

.. RESPONDENTS

(By Sri Hulegappa Heroor, HCGP)

This Writ Petition is filed under articles 226 and 227 of the Constitution of India praying to grant stay of dispossession of the petitioners from lands Sy.No.129, 157, 177 and 211 of Kempapura Vilalge, Kolar District etc.,

This Writ Petition coming on for hearing this day, the Court made the following :-

O R D E R

These writ petitions are filed under articles 226 and 227 of the Constitution of India to set aside the order dated 30-10-1987 passed in Case No.INA.4/82-83 by the second respondent Tahsildar, Bangarpet Taluk, Kolar District as per Annex.A.

Heard the Counsel for the Writ Petitioners and the Government Pleader for Respondents 1 and .


2. R&S

2. The main ground alleged is that in view of the decision in ILR 1994 KAR.159 wherein it has been held that " where the sale is prior to 7-8-1978 and regrant is after 7-8-1978, the benefit of regrant relates back to the date of commencement of the Principal Act and thereby enures to the benefit of the alienee in whose favour alienation has been made prior to 7-8-1978. The bar against alienation affected only alienations after 7-8-1978 and not alienations prior to 7-8-1978." The Tahsildar has contended that failure to give reasonable opportunity to petitioners to put forward their case and pass the order dated 30-10-1987 and the appeal against this order before the II Addl.District and Sessions Judge, Kolar was dismissed, but in view of the Full Bench decision in ILR 1994 KAR.159 the entire matter is remitted back to the second respondent Tahsildar with a direction to dispose of the claims of the petitioners in view of the observations made that there is no provision under the Karnataka Village Officers Abolition Act as amended by 13/78 to affect an alienee under alienation made between ~~RS~~ 1-2-1963 and 7-8-1978. Section 7 is not applicable, as such an alienee is an unauthorised RS

holder. If the land alienated between 1-2-1963 and 7-8-1978 is subsequently regranted to the alienor the benefit of such regrant viz., title will enure to the benefit of alienee. If the land is not regranted to the alienor but to someone else on the ground that the alienor is not a holder or unauthorised holder then the alienee will be in the position of a transferee from a person without any title; and the grantee to whom the regrant is made, will be entitled to obtain possession from the alienee and the limitation for such grantee to dispossess the alienees will commence from the date of regrant. The alienee between 1-2-1963 and 7-8-1978 has no right to seek regrant in his own name and his right is only to claim the benefit of doctrine of feeding the grant by estoppel as and when regrant is made to his alienor under Sections 5(1) or 6; and for this purpose he may support or pursue any application for regrant in favour of his alienor. Alienation of regranted Service Inam Land during the period 1-2-1963 to 7-8-1978 is valid and permission for sale is only a formality as the Deputy Commissioner was bound to give permission on mere payment of an amount equal to 15 times of land assessment. Under Sections 5(1) and 6 of

93

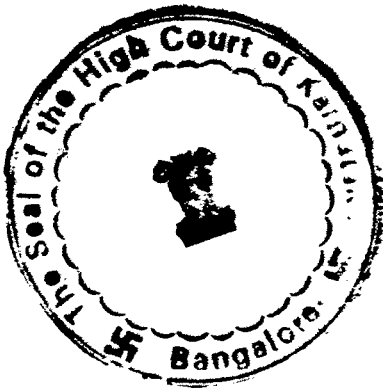
-6 -

the Act, any holder of avillage office or any authorised holder, has a vested right to obtain regrant of the Service Inam land which was held by him immediately before 1-2-1963 (that is as at the end of 31-1-1963) subject to payment of occupancy price in terms of the Act and the Rules; the fact that the holder or authorised holder had alienated the land and divested himself of possession of the land after 1-2-1963 and before 7-8-1978 will not disentitle him to regrant under Section 5(1) or 6 of the Act as what is relevant for regrant is holding of such land as at the end of 31-1-1963. Alienation of Service Inam Land between 1-2-1963 and 7-8-1978, by a holder or an authorised holder before regrant, is not valid, as he had a vested right to get regrant and as there was no bar regarding alienation during that period; but the alienee will be a person with imperfect title entitled to continue in possession and when the land is regranted to the alienor, the title obtained by the alienor will enure to the benefit of the alienee; 

94

In view of the above observations made, the order passed by the Tahsildar as per Annex.A is set aside and the entire matter is remitted back to dispose of the matter directing the respondent to pass suitable orders and to consider the prayer made by the writ petitioners and also with respect to the collection of 15 times land revenue in respect of lands bearing Sy.Nos.129, 157, 177, 211 of Kempapura Village, Bagalkot Taluk, Kolar District. Accordingly the writ petitions are disposed of.

Sd/-
JUDGE



nvfs